

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

S.P. 607 - L.D. 1762

An Act To Amend and Clarify the Public Charter School Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§10-D, as enacted by PL 2011, c. 414, §1, is amended to read:

10-D.

Education	State-Maine Charter School Commission	Travel Expenses Only	20-A MRSA §2405, sub-§8
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Sec. 2. 20-A MRSA §2401, sub-§2-A is enacted to read:

2-A. Catchment area. "Catchment area" means the geographic area from which a public charter school expects to draw the majority of its students, which may not be smaller than the combined enrollment areas of the 2 closest noncharter public schools serving students of the same grade levels as the applicant is proposing to serve, or the geographic area within a radius of 20 miles extending from the public charter school, whichever is smaller.

Sec. 3. 20-A MRSA §2403, sub-§5, as enacted by PL 2011, c. 414, §5, is amended to read:

5. Investigation and sanction of authorizers. Consistent with the policies and practices established in subsection 4, the department may investigate and, as appropriate, institute sanctions in response to deficiencies in authorizer performance or legal compliance. In addition to any other sanction instituted, the commissioner may suspend a deficient authorizer's authority to issue new charters or renew existing charters until the commissioner is satisfied that the deficiencies have been corrected.

Sec. 4. 20-A MRSA §2405, sub-§1, ¶C, as enacted by PL 2011, c. 414, §5, is amended to read:

C. A collaborative among ~~authorizing entities~~ local school boards that forms to set up a regional public charter school to be located within the area managed and controlled by those local school boards.

Sec. 5. 20-A MRSA §2405, sub-§4, ¶¶C and D, as enacted by PL 2011, c. 414, §5, are amended to read:

C. The status of the authorizer's public charter school portfolio of approved charter applications, identifying all public charter schools within that portfolio as:

- (1) Approved, but not yet open;
- (2) Operating;
- (3) Renewed;
- (4) Transferred;
- (5) Terminated;
- (6) Closed; or
- (7) Never opened; ~~and~~

D. The oversight and services provided by the authorizer to the public charter schools under the authorizer's purview; and

Sec. 6. 20-A MRSA §2405, sub-§4, ¶E is enacted to read:

E. The total amount of funds collected from each public charter school the authorizer authorized pursuant to subsection 5, paragraph B and the costs incurred by the authorizer to oversee each public charter school.

Sec. 7. 20-A MRSA §2405, sub-§8, as enacted by PL 2011, c. 414, §5, is amended to read:

8. Maine Charter School Commission. The ~~State~~ Maine Charter School Commission, established under Title 5, section 12004-G, subsection 10-D, is referred to in this chapter as "the commission."

A. The commission consists of 7 members appointed by the state board for 3-year terms. The commission shall elect a chair and such other officers as may be necessary to conduct its business. Four members constitute a quorum.

(1) Three members must be members of the state board, and those 3 members shall nominate the other 4 members who must be approved by a majority vote of the state board.

(2) Members appointed to the commission must have diverse professional experience in education, social services, youth training, business startup and administration, accounting and finance, strategic planning and nonprofit governance. The following provisions apply to the appointment of the 4 other members nominated and appointed by state board members pursuant to subparagraph (1):

(a) In appointing members to the commission, the state board shall give proper consideration to candidates with experience in a noncharter public school in the State in one of the following positions: school board member, superintendent, teacher and special education director;

- (b) The state board shall ensure that the joint standing committee of the Legislature having jurisdiction over education matters has an opportunity to meet and interview the candidate or candidates nominated for the commission;
- (c) Within 10 days of meeting with the candidate or candidates, the joint standing committee of the Legislature having jurisdiction over education matters shall deliver to the state board its written appraisal of the strengths and weaknesses of the candidate or candidates; and
- (d) The state board shall consider the appraisal of the joint standing committee of the Legislature having jurisdiction over education matters prior to appointing a candidate or candidates to the commission.
- (3) A commission member may not serve more than 3 consecutive terms, but may serve again after not serving on the commission for at least one term.
- (4) A commission member may not receive compensation, but may be reimbursed for ~~travel~~ expenses.
- (5) A commission member who is a member of the state board serves on the commission only during that person's membership on the state board. Upon expiration of that person's state board membership, the position on the commission becomes vacant and must be filled in the manner provided for filling vacancies. The term of a member who is approved by the state board and reviewed by the joint standing committee of the Legislature having jurisdiction over education matters ends on June 30th of the final year of the member's term.
- (6) A vacancy on the commission must be filled in the same manner as the position in which the vacancy occurs is regularly filled, including, if applicable, a review by the joint standing committee of the Legislature having jurisdiction over education matters. A vacancy is filled for the remainder of the unexpired term. If the person serves more than 1 1/2 years of an unexpired term, that service counts as one term for purposes of the limitation set forth in subparagraph (3).
- (7) A member of the commission may be removed for failure to perform the duties of office, as specified in commission rules, by a majority vote of the state board.

B. The commission shall adopt rules for the organization and operation of the commission and to develop, implement and refine its procedures for authorizing public charter schools in this State. Rules adopted by the commission pursuant to this paragraph before June 30, 2014 are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. Beginning June 30, 2014, rules adopted by the commission pursuant to this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

C. The commission shall, in keeping with its authorizing responsibilities:

- (1) Engage professional and administrative staff, separate from the department;
- (2) Convene stakeholder groups and engage experts; and
- (3) Seek and receive state, federal and private funds.

D. The commission is the sole authorizer in this State for virtual public charter schools, except that a local school board may authorize a public charter school within its jurisdiction that integrates online and on-site instruction.

Sec. 8. 20-A MRSA §2405, sub-§9, as enacted by PL 2011, c. 414, §5, is amended to read:

9. Transition period. The public charter school program set out in this chapter must begin with a 10-year transition period, beginning on the effective date of this chapter. During the transition period, the commissioner shall register the charters approved by all authorizers in chronological order by date of approval under this chapter. During the transition period, only 10 public charter schools may be approved by ~~authorizers other than local school boards~~ the commission. Once the cap is reached, the commissioner may not accept further registrations from ~~authorizers other than local school boards~~ the commission and only local school boards and collaboratives of local school boards may approve charters until the end of the transition period.

This subsection is repealed July 1, 2022.

Sec. 9. 20-A MRSA §2406, sub-§2, ¶F, as enacted by PL 2011, c. 414, §5, is amended to read:

F. A request for proposals must require applications to provide or describe thoroughly, at a minimum, all of the following essential elements of the proposed public charter school plan:

- (1) The proposed public charter school's vision, including:
 - (a) An executive summary;
 - (b) The mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school hopes to serve; and
 - (c) Evidence of need and community support for the proposed public charter school, including information on discussions with the school administrative unit where the public charter school will be located concerning recruitment and operations of the public charter school and possible collaboration with nearby school administrative units;
- (2) The proposed public charter school's governance plan, including:
 - (a) Background information on proposed board members and any assurances or certifications required by the authorizer;
 - (b) Proposed governing bylaws;
 - (c) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, staff and any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

- (d) A clear description of the roles and responsibilities for the governing board, the school's leadership and management team and any other entities shown on the organization chart;
 - (e) Identification of the proposed founding governing board members and, if identified, the proposed school leader or leaders; and
 - (f) Background information on the school's leadership and management team, if identified;
- (3) The proposed public charter school's plan of organization, including:
- (a) The location or geographic area of the school and the proposed catchment area of the school, which may not be designed to exclude areas with high rates of poverty, English language learners, at-risk students or students with disabilities;
 - (b) The grades to be served each year for the full term of the charter;
 - (c) Minimum, planned and maximum enrollment per grade per year for the term of the charter;
 - (d) The school's proposed calendar and sample daily schedule;
 - (e) Plans and timelines for student recruitment and enrollment, including lottery procedures;
 - (f) Explanations of any partnerships or contractual relationships central to the school's operations or mission;
 - (g) The school's proposals for providing transportation, food service and other significant operational or ancillary services;
 - (h) A facilities plan, including backup or contingency plans if appropriate;
 - (i) A detailed school start-up plan, identifying tasks, timelines and responsible individuals; and
 - (j) A closure protocol, outlining orderly plans and timelines for transitioning students and student records to new schools and for appropriately disposing of school funds, property and assets in the event of school closure;
- (4) The proposed public charter school's finances, including:
- (a) A description of the school's financial plan and policies, including financial controls and audit requirements;
 - (b) Start-up and 3-year budgets with clearly stated assumptions;
 - (c) Start-up and first-year cash-flow projections with clearly stated assumptions;
 - (d) Evidence of anticipated fund-raising contributions, if claimed in the application; and
 - (e) A description of the insurance coverage the school proposes to obtain;
- (5) The proposed public charter school's student policy, including:

- (a) The school's plans for identifying and successfully serving students with the wide range of learning needs and styles typically found in noncharter public schools of the sending area;
 - (b) The school's plans for compliance with applicable laws, rules and regulations; and
 - (c) The school's student discipline plans and policies, including those for special education students;
- (6) The proposed public charter school's academic program, including:
- (a) A description of the academic program aligned with the statewide system of learning results under section 6209;
 - (b) A description of the school's instructional design, including the type of learning environment, such as classroom-based or independent study, class size and structure, curriculum overview, teaching methods and research basis;
 - (c) The school's plan for using internal and external assessments to measure and report student progress on the measures and metrics of the performance framework developed by the authorizer in accordance with section 2409; and
 - (d) A description of cocurricular or extracurricular programs and how they will be funded and delivered; and
- (7) The proposed public charter school's staff policy, including:
- (a) A staffing chart for the school's first year and a staffing plan for the term of the charter;
 - (b) Plans for recruiting and developing school leadership and staff;
 - (c) The school's leadership and teacher employment policies, including performance evaluation plans; and
 - (d) Opportunities and expectations for parent involvement.

Sec. 10. 20-A MRSA §2408, sub-§1, ¶A, as enacted by PL 2011, c. 414, §5, is amended to read:

A. After approval of an application and no later than 60 days prior to the opening date of the public charter school, the authorizer and the governing board shall execute a charter contract that sets forth:

- (1) Performance provisions describing the academic and operational performance expectations and measures by which the public charter school will be judged; ~~and~~
- (2) Administrative provisions articulating the administrative relationship between the authorizer and the public charter school, including each party's rights and duties; and
- (3) A description of the standards and processes under which the authorizer may pursue revocation of the charter contract.

Sec. 11. 20-A MRSA §2410, sub-§2, as enacted by PL 2011, c. 414, §5, is amended to read:

2. Notification of unsatisfactory performance or compliance. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly ~~notify~~ provide written notice to the public charter school of perceived problems and provide reasonable opportunity for the school to remedy the problems.

Sec. 12. 20-A MRSA §2411, sub-§6, ¶C is enacted to read:

C. The authorizer shall include in the charter contract a description of the standards and processes under which the authorizer may pursue revocation of the charter contract. The processes must comply with section 2410, subsection 2 and provide an opportunity for the public charter school to be heard prior to a decision on revocation.

Sec. 13. 20-A MRSA §2412, sub-§4, ¶D, as enacted by PL 2011, c. 414, §5, is amended to read:

D. A public charter school must have a plan that describes how the school will ~~meet~~ provide transportation for its students who reside in the school's catchment area and what assistance, if any, it will provide to meet the transportation needs of its students who reside outside the catchment area of the school.

Sec. 14. 20-A MRSA §2412, sub-§5, ¶C, as enacted by PL 2011, c. 414, §5, is amended to read:

C. Governing boards are subject to and must comply with sections 1002 and 1004 in the same manner as school boards and Title 1, chapter 13.

Sec. 15. 20-A MRSA §2412, sub-§5, ¶¶G and H are enacted to read:

G. Public charter schools are subject to the same federal and state laws, regulations and rules regarding special education as noncharter public schools. Notwithstanding any law or rule to the contrary, a public charter school takes over responsibility for special education for a student transferring to the public charter school on the first day of school at the public charter school unless the public charter school and the transferring school agree to an earlier date.

H. A public charter school student's eligibility for and the funding of the student's career and technical education programming are the same as if the student were attending school within that student's resident school administrative unit. If the public charter school is located outside the student's resident school administrative unit, the public charter school is responsible for ensuring that the student is transported to the career and technical education center or to a location from which the student will be transported to the career and technical education center by the resident school administrative unit, the career and technical education region or the career and technical education center.

Sec. 16. 20-A MRSA §2412, sub-§6, ¶C, as enacted by PL 2011, c. 414, §5, is amended to read:

C. Teachers at a public charter school may choose to bargain collectively ~~or form a professional group~~ in accordance with this paragraph.

(1) Teachers who are employees of the public charter school have the same rights as other teachers in public education to organize and bargain collectively. Bargaining units at the public charter school must be separate from other bargaining units, such as a district bargaining unit. Staff at noncharter public schools converting to public charter schools have a right to employment benefits as stated in applicable collective bargaining agreements or they may vote to be represented in alternative ways.

~~(2) A teacher who is an employee of the public charter school may choose to be part of a professional group that operates the instructional program under an agreement with the public charter school, forming a partnership or producer cooperative that the teachers collectively own.~~

(3) Teachers who are employees of the public charter school may not be required to be members of any existing collective bargaining agreement between a school administrative unit and its employees. A public charter school may not interfere with civil service laws or other applicable rules protecting the rights of employees to organize and be free from discrimination.

Sec. 17. 20-A MRSA §2412, sub-§7, as enacted by PL 2011, c. 414, §5, is repealed.

Sec. 18. 20-A MRSA §2412-A is enacted to read:

§2412-A. Audits

1. External audit. A public charter school shall adhere to generally accepted accounting principles and shall annually engage an external auditor to do an independent audit of the public charter school's finances. The public charter school shall submit the audit to its authorizer and to the department. The audit must include the following:

- A. An accounting of all revenues and expenditures;
- B. A determination of whether proper budgetary controls are in place;
- C. A determination of whether the annual financial data submitted to the authorizer and to the department is correct;
- D. An audit of any federal programs in accordance with applicable federal law; and
- E. Any other information that the commissioner requires.

2. Fiscal year. The fiscal year of an audit is from July 1st to June 30th, except that audits of federal programs must conform to federal requirements.

3. Auditors. Audits must be conducted by qualified certified public accountants or public accountants licensed by the Board of Accountancy.

4. Initial report to commissioner. On or before November 1st, a public charter school shall provide the commissioner with:

A. A written determination of whether proper budgetary controls are in place;

B. A written determination of whether the annual financial data submitted to the department is correct, including submission of an audited reconciliation of the annual financial data prepared and certified by the external auditor; and

C. A written determination as to whether the public charter school has complied with applicable provisions of the Essential Programs and Services Funding Act.

5. Records. A public charter school shall keep financial records and accounts for 7 years after the end of the fiscal year and shall make them available to the external auditor and any other person upon request.

6. Report to commissioner. Within 6 months after the end of an audit under subsection 1, a public charter school shall provide the commissioner with:

A. An audit report;

B. An accounting of all revenues and expenditures;

C. Written assurance that the audit has been conducted in accordance with applicable state and federal laws relating to financial and compliance audits; and

D. Any other information that the commissioner requires.

7. Corrective action plan. The commissioner shall review the annual audit under subsection 1 of a public charter school and determine if the public charter school should develop a corrective action plan for any audit issues specified in the annual audit. A corrective action plan must address those audit findings and management comments and recommendations that have been identified by the commissioner, and the plan must be filed within the timeline established by the commissioner. The public charter school shall provide assurances to the commissioner that the public charter school has implemented its corrective action plan within the timeline established by the commissioner. If the public charter school has not met the conditions for filing a corrective action plan or providing assurances that the public charter school has implemented the plan, the commissioner may withhold monthly subsidy payments from the public charter school in accordance with section 6801-A.

Sec. 19. 20-A MRSA §2413, sub-§2, as enacted by PL 2011, c. 414, §5, is amended to read:

2. Revenue provisions. ~~All state~~ State and local operating funds follow each student to the public charter school attended by the student, except that the school administrative unit of the student's residence may retain up to 1% of the per-pupil allocation described in this subsection to cover associated administrative costs.

A. For each public charter school student, the school administrative unit in which the student resides must forward the per-pupil allocation to the public charter school attended by the student as follows.

(1) The per-pupil allocation amount is the EPS per-pupil rate for the school administrative unit in which the student resides, as calculated pursuant to section 15676, based on the student's grade level and adjusted as appropriate for

economic disadvantage and limited English proficiency pursuant to section 15675, subsections 1 and 2. ~~For transportation expenses, the average per pupil expense in each school administrative unit of residence must be calculated and a per pupil allocation of that amount must be forwarded to the public charter school attended on the same basis as the per pupil allocations for operating funds.~~ Debt service and capital outlays may not be included in the calculation of these per-pupil allocations. The department shall adopt rules governing how to calculate these per-pupil allocations, including those for ~~gifted and talented programs~~, vocational, technical and career education programs, ~~and~~ targeted funds for assessment technology and kindergarten to grade 2 programs.

(2) For students attending public charter schools, the school administrative unit of residence shall forward the per-pupil allocations described in subparagraph (1) directly to the public charter school attended. These per-pupil allocations must be forwarded to each public charter school on a quarterly basis, as follows. For each fiscal year, allocations must be made in quarterly payments on September 1st, December 1st, March 1st and June 1st. The September payment must be based on the number of students enrolled or anticipated to be enrolled in the public charter school at the opening of school for that school year, which may not exceed the maximum enrollment approved in the charter contract for that year unless a waiver is obtained from the authorizer. In February of the school year, if the number of students is higher or lower than the number of students at the beginning of the school year, adjustments must be made in the June payment, with 50% of the annual per-pupil allocation added for additional students or subtracted if the total number of students is lower.

(3) For transportation expenses, the average per-pupil expense in each school administrative unit of residence must be calculated and an amount equal to a proportion, up to but not more than 100%, of that per-pupil allocation amount must be forwarded to the public charter school attended on the same basis as the per-pupil allocations for operating funds. The percentage of that per-pupil expense must be determined by the authorizer of the public charter school and must be based on the cost of transportation services provided by the public charter school to the student.

(4) The department shall pay to the public charter school any additional allocation assigned to the public charter school for gifted and talented students pursuant to section 15681-A, subsection 5 in the year in which the allocation is assigned.

A school administrative unit is not required to send funds to a public charter school for a student enrolled in the public charter school's preschool or prekindergarten program if the school administrative unit of the student's residence does not offer that program to its own residents.

B. The following provisions govern special education funding.

(1) For each enrolled special education pupil, a public charter school must receive the average additional allocation calculated by the department under section 15681-A, subsection 2 for each school administrative unit for its special

education students. These allocations must be paid on the same basis as the per-pupil allocations for operating funds.

(2) The school administrative unit of residence shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the public charter school in proportion to the level of services for the student with a disability that the public charter school provides directly or indirectly.

(3) The department shall pay to the public charter school any additional allocation assigned to the public charter school because of a high-cost in-district placement in accordance with section 15681-A, subsection 2, paragraph B in the year in which the allocation is assigned.

(4) The school administrative unit of residence shall pay to the public charter school any additional allocation assigned to the unit because of a high-cost out-of-district placement in accordance with section 15681-A, subsection 2, paragraph C in the year in which the allocation is assigned to the school administrative unit.

(5) If the public charter school in which the student is enrolled was authorized by a local school board or a collaborative of local school boards, the funds under this paragraph must be paid to the local school board that authorized the public charter school or to the designated school board of the collaborative, rather than directly to the public charter school. The local school board or boards that authorized the charter school are responsible for ensuring that special education services are provided to students in that school, pursuant to section 2412, subsection 2, paragraph A.

C. Except as otherwise provided in this chapter, the State shall send applicable federal funds directly to public charter schools attended by eligible students. Public charter schools with students eligible for funds under Title I of the federal Elementary and Secondary Education Act of 1965, 20 United States Code, Section 6301 et seq. must receive and use these funds in accordance with federal and state law. During the first year of operation, a public charter school must receive Title I funds on the basis of an estimated enrollment of eligible students, as agreed with its authorizer.

D. A public charter school may receive gifts and grants from private sources in any manner that is available to a school administrative unit.

E. A public charter school may not levy taxes or issue bonds secured by tax revenues.

F. In the event of the failure of the school administrative unit to make payments required by this section, the Treasurer of State shall deduct from any state funds that become due to the school administrative unit an amount equal to the unpaid obligation. The Treasurer of State shall pay over the amount to the public charter school upon certification by the department. The department shall adopt rules to implement the provisions of this paragraph.

G. Any money received by a public charter school from any source and remaining in the school's accounts at the end of any budget year remains in the school's accounts

for use by the school during subsequent budget years and may not revert to the authorizer or to the State.

H. Nothing in this chapter may be construed to prohibit any person or organization from providing funding or other assistance for the establishment or operation of a public charter school. The governing board of a public charter school may accept gifts, donations or grants of any kind made to the school and expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor except that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

~~I. Public charter schools have the same access as other noncharter public schools to any risk pool for high cost special education services and to any fund for fiscal emergencies.~~

J. The department may establish a method of transferring funds to public charter schools that is an alternative to the method provided in this subsection.

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor